0010-12

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER
OF
EDUCATION

John W. Doe

v.

Westerly School Committee

DECISION

Held: The decision of the Westerly School Committee is affirmed. Mr. Doe is not entitled to the School Committee's approval of a home instruction program because his children are not "in a course of at-home instruction". They are enrolled in a private school in Connecticut and attend this school on a full-time basis.

DATE: June 14, 2012

Travel of the Case:

On May 2, 2012 the Appellant filed an appeal with Commissioner Deborah A. Gist to challenge the decision of the Westerly School Committee denying his request for approval to home-school his two daughters. The members of the School Committee made their decision at a meeting on May 2, 2012 and later provided the Appellant with a written decision dated May 4, 2012. The Appellant has requested that the Commissioner issue an interim protective order so that his children will receive a full and complete education in accordance with applicable state and federal laws and regulations.

The undersigned was designated to hear this matter on May 3, 2012. A hearing was conducted on May 8 and 9, 2012. At the close of the hearing, the Petitioner withdrew his request for an interim order, but both parties requested that the hearing officer retain this matter and issue a decision on an expedited basis as soon as memoranda had been filed. The record in this appeal closed on June 8, 2012 at which time the Petitioner's Reply Memorandum was received.

Since both parties have agreed that an expedited decision is necessary for educational planning purposes, the decision in this matter has been expedited.

Findings of Relevant Facts:[1]

- The Appellant and his two daughters, Student K. Doe and Student A. Doe, currently reside in Westerly, Rhode Island. They moved to Westerly from Connecticut on or about April 16, 2012.
- Student K. Doe and Student A. Doe have been enrolled at a private secondary school in New London, Connecticut since August of 2011 and at the time of the hearing were in regular attendance there. Since it is located in Connecticut, their private school is not approved by the Commissioner of Elementary and Secondary Education of the state of Rhode Island.

[1] Findings of Fact are based on the exhibits and the Hearing Officer's notes.

- On April 6, 2012 the Appellant submitted a request for approval of a home instruction program to the Assistant Superintendent of the Westerly School Department. In his request, he indicated that he was seeking approval of an alternative learning plan, including but not limited to "a course of at-home instruction…" He proposed to provide his daughters with a course of at-home instruction himself through contract with the private school they currently attend and by contracting with other individuals. His application described the required components of the instructional program for each of the girls, the method of evaluating the programs' effectiveness, and the anticipated filing of attendance reports. The Appellant assured the Assistant Superintendent that the teaching of his daughters would be "thorough and efficient" as the home-instruction statute, RIGL 16-19-1, requires. S.C. Ex. C.
- Both students plan to continue in daily attendance at the private school in Connecticut for the balance of this school year and through the next. The full-day program at their school is 7:45 a.m. to 3:45 p.m.
- The private school these students attend in Connecticut does not have a track team, does not offer pole-vaulting, and the Appellant's daughters are not otherwise eligible to participate in interscholastic pole-vaulting in Connecticut.
- In his letter to the Assistant Superintendent, as well as in his April 18, 2012 letter to the members of the Westerly School Committee, the Appellant noted that both of his children are exceptional athletes and that they wish to be included as members of the Westerly High School track and field teams, both indoor and outdoor. Since the private school that they attend in Connecticut does not have a track team, this is a "missing element" of their current educational program. S.C. Ex. C and D.
- On April 24, 2012 Assistant Superintendent Alicia J. Storey wrote that since the Appellant's children attend a private school, RIGL 16-19-1 did not apply to their circumstance. S.C. Ex. B. A majority of the members of the Westerly School Committee agreed and voted to deny the Appellant's request because they found it

"inconsistent with the design and intent of the Rhode Island Home School law (Title 16-19-1)". Letter of Superintendent Roy M. Seitsinger, Jr., Ph.D.

- If the Appellant's programs of home instruction for his daughters were approved by the Westerly School Committee, Westerly would then consider his request for them to participate on the high school track team. Eligibility to participate on the Westerly High School track team has significant implications, particularly for Student K. Doe, who, at the time of hearing, wished to qualify to participate in an upcoming state meet. She seeks consideration for college admission and scholarships based, in part, on her performance in interscholastic pole vault competitions.

Positions of the Parties

The Appellant

Counsel for the Appellant argues that the Westerly School Committee and its staff have taken an overly restrictive view of "home instruction" as this word appears in the statute which gives Rhode Island parents the right, and School Committee's the obligation, to approve such programs. As a Westerly resident, Mr. Doe is totally within his rights to request that the School Committee grant approval to the educational program he has developed for his two daughters. The words "at-home instruction" (as they appear in R.I.G.L. 16-19-1 and 16-19-2) should be construed in light of how such programs have evolved to benefit students. "Homeschooling" now runs the gamut of correspondence courses, on-line courses, community programs, college classes, private tutors, internships, long-term travel, volunteering, or a collaborative of homeschooling parents. Mr. Doe has sought to put together precisely such a program that would best meet his daughters' academic needs and foster their desire to compete in interscholastic sports. The program proposed by the Appellant on April 6, 2012 consists of a number of components- private education (through a contract with a private school), his own instruction in Rhode Island history, and his ongoing direction of both girls' pole-vaulting training and activities. When faced with the "eclectic" nature of Mr. Doe's program, however, Westerly officials have

clung to the notion that because the proposed home instruction program does not take place in the home and is not provided exclusively by the parent, they erroneously find it to be "inconsistent with the design and intent of the Rhode Island Home School law".

The Appellant argues, through counsel, that a reasonable construction of R.I.G.L. 16-19-1 supports the conclusion that attendance at a private school outside Rhode Island should be approved as "home instruction". As Westerly residents, the Appellant's children are subject to this state's compulsory education laws. If his daughters do not attend a public school and do not regularly attend a private school "approved by the commissioner of elementary and secondary education pursuant to §16-60-6(10) (the parties agree that Mr. Doe's daughters are not in attendance in a school of either category) then, *ipso facto* their attendance at an out-of-state private school must constitute home instruction. It is only when a Rhode Island student's attendance at a private school outside the state's borders is deemed to be attendance in a program of at-home instruction that a significant gap in our compulsory education law is filled. Thus recognition of Mr. Doe's proposal as a "homeschool" arrangement will provide "legal repose" for families whose children, like Mr. Doe's children, live in Rhode Island and attend an out-of-state private school. If such a construction is not made, then Rhode Island families whose children attend a private school in nearby Massachusetts or Connecticut are technically subject to prosecution for violation of this statute.

Counsel for the Appellant also submits that the School Committee has not substantiated the contention that if Mr. Doe's daughters are allowed to join Westerly High School's interscholastic athletic teams, disruption will result-either to the teams or to the Interscholastic League. Despite the concern expressed by the Superintendent that private school students –deemed to be "home schooled"- could be recruited to join public school sports teams in Rhode Island, there is no evidence that such a situation would result. Even if it did, the Rhode Island Interscholastic League Rules already address the problem of recruiting from any school, whether public or private. The simple fact that these students are enrolled in a private school in the next state should not be preventing them from participating on a Rhode Island public school track team.

Since the Westerly School Committee has failed to identify a valid reason for refusing to approve the homeschooling plan submitted by the Appellant and, consistent with their decision and without justification, refused to permit the children to participate on Westerly's track team, the issuance of an interim protective order is requested pursuant to R.I.G.L. 16-39-3.2.

Westerly School Committee

Counsel for the School Committee submits that there is a clear basis for the denial of Mr. Doe's request for approval of a home-schooling program for his daughters-he is not proposing to home school them. The problem here is not that the administration and members of the School Committee are refusing to make a flexible interpretation of the law and broaden their view of what constitutes a home instruction program. Testimony from school officials confirms that home schooling families in Westerly often utilize various technologies and community resources, but that the common thread (absent from the Appellant's proposal) is that these programs are based at home. The Committee recognizes that an eclectic "mix of options" often comprises a home school program, with parents utilizing resources outside the home such as online schools, learning cooperatives and other resources in the community to supplement and enhance the study at home. Particularly during the later secondary years, a student may enroll in an occasional course at a public or private institution to supplement the home school instruction. None of Westerly's home-schooled students attend an educational institution for the entire day or full-time throughout a school year. The Appellant's children are and will continue to be enrolled full-time in a private school in Connecticut (from which they will likely graduate). The School Committee contends that there is no home instruction program to which they should give approval insofar as the "home school plan" in its entirety[2] is to be provided through enrollment at a private school.

[2] Mr. Doe has indicated his intent to teach the girls Rhode Island history, but has not yet begun this instruction.

The Committee argues that the effect of "deeming" the Appellant's daughters to be enrolled in a program of home instruction would unnecessarily eradicate the difference between home instruction and attendance at private school, a distinction found in Rhode Island's compulsory education law. To deny that there is such a distinction is contrary to common sense and requires the Commissioner to ignore long-standing statutory language that the General Assembly has purposefully placed in R.I.G.L. 16-19-1. Although it is true that the Connecticut school is not a private school approved by the Rhode Island Commissioner of Elementary and Secondary Education, this does not mean, *ipso facto*, that attendance there constitutes home instruction.

The School Committee recognizes that the purpose of the Appellant's request is laudable-to enable his daughters to fulfill their athletic aspirations. But this purpose does not warrant or otherwise compel the Westerly School Committee to share the conclusion that these students are "deemed to be" in a program of at-home instruction. No student has an entitlement to participate in interscholastic sports, and there is clear precedent that public schools are under no obligation to admit non-public school students (or home-schooled students) to public school programs. See Student M.P. v. Warwick, decision of the Commissioner dated January 30, 2004. The Appellant was aware that the private school his daughters attend did not offer pole-vaulting when he enrolled his daughters there in August of 2011. The Appellant should redirect his efforts to secure this sport at their private school or enroll the girls in the Westerly Public Schools as full-time students.

For the foregoing reasons, counsel for the School Committee requests that the appeal be denied and dismissed.

DECISION

There is no reasonable construction of the words "at-home instruction" and "course of at-home instruction" as these words appear in R.I.G.L. 16-19-1 and 16-19-2 that would bring within their ambit full-time, full-year enrollment and attendance of the Appellant's children at a private school in New London, Connecticut. The School Committee has made

a fully-supported decision to deny the Appellant's request for approval of his "home instruction" program based on the fact that they will not be in a course of at-home instruction, but rather in full-time attendance at a private school. Although the Appellant has argued that the School Committee holds an antiquated notion of home-schooling as that which takes place entirely in the home and is provided exclusively by the parent(s), this is not what the record in this case demonstrates. Westerly home schoolers enjoy flexible arrangements and utilization of a host of resources outside of the home in supplementing their home-based programs. This interpretation recognizes how the statute has kept pace with educational, cultural and technological changes to provide Rhode Island parents with effective options in educating their children.

It is true, as the Appellant has pointed out in his Reply Memorandum, that the girls' school is not approved by our Commissioner.[3] It may be that there is a "gap" in our compulsory education law (with respect to students who attend out-of-state private schools), but it may also be that school districts and attendance officers have interpreted and applied the language in R.I.G.L. 16-19-1 to validate the attendance of Rhode Island students at out-of-state private schools that are approved by the appropriate official in the state in which they are located. In any event, the fact that this school is not approved by Rhode Island's Commissioner does not convert attendance there into attendance in a home instruction program.

The Appellant has not advanced a compelling or even a legitimate reason for the Commissioner to require Westerly school officials to nonetheless "deem" their attendance at a school in Connecticut to constitute attendance in a home instruction program in order to facilitate their participation on the Westerly High School track and field team. The Eligibility Rules of the R.I. Interscholastic League (Petitioner's Ex.6) appear to be comprehensive and fair to the extent that they may relate to this case. It is regrettable that

[3] The argument advanced is that unless his home instruction program is approved by the Westerly School Committee, the Appellant will technically be in violation of R.I.G.L. 16-19-1 since the girls are not in attendance at a "private day school" approved by our Commissioner under R.I.G.L. 16-60-6 (10). Therefore, it is argued, his program must be considered as an approvable program of at-home instruction or he and other parents of students who attend an out-of-state private school are "at least technically subject to truancy proceedings". (Petitioner's Reply Memo at page 4).

the Appellant's daughters are unable to participate at the interscholastic level in a track event in which they have demonstrated considerable talent, but there is no remedy available to them in this forum on the bases advanced.

The Appellant's appeal is denied and dismissed.

For the Commissioner,

_____
Kathleen S. Murray
Hearing Officer

_____ June 14, 2012
Deborah A. Gist Date
Commissioner